

APR 28 1993

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

In re Applications of	)	MM DOCKET NO. 93-54
	)	
<b>GAF BROADCASTING COMPANY, INC.</b>	)	File No. BRH-910201WL
	)	
For Renewal of License of Station	)	
WNCN(FM) (104.3 MHz), New York,	)	
New York	)	
	)	
<b>CLASS ENTERTAINMENT AND</b>	)	
<b>COMMUNICATIONS, L.P.</b>	)	File No. BPH-910430ME
	)	
<b>THE FIDELIO GROUP, INC.</b>	)	File No. BPH-910502MQ
	)	
For a Construction Permit for a	)	
New FM Station on 104.3 MHz at	)	
New York, New York	)	

To: Administrative Law Judge  
 Joseph Chachkin

**MASS MEDIA BUREAU'S OPPOSITION TO MOTION TO ENLARGE ISSUES**

1. On April 19, 1993, Listeners' Guild, Inc. ("Guild") filed a Motion to Enlarge Issues ("Motion"). The Mass Media Bureau submits the following comments in opposition to Guild's Motion.

2. Guild seeks addition of the following issues against GAF Broadcasting Company, Inc. ("GAF"):

- (1) To determine the circumstances under which GAF Broadcasting Company, Inc. ("GAF"), licensee of WNCN(FM), New York, New York, falsely reported employment data to the Commission and made reference

- (2) To determine whether GAF Broadcasting Company, Inc. ("GAF"), licensee of WNCN(FM), New York, New York, engaged in activities in its dealings with Listeners' Guild, Inc. that constituted abuse of the Commission's processes by means of threats and/or inducements calculated to avert the filing of information and/or arguments before the Commission that would have reflected adversely upon GAF and its applications before the Commission, and if so, to determine the effect thereof on GAF's qualifications and fitness and on its application for renewal of its license.


3. Guild claims that neither of these proposed issues was dealt with in the Hearing Designation Order, 8 FCC Rcd 1742 (ASD 1993). Guild incorporates by reference the allegations and evidence set forth in its April 14, 1993, Petition for Reconsideration and its concurrently filed Petition for


1.229(d) requires that "motions to enlarge contain specific allegations of fact sufficient to support the action requested." Here, Guild has failed to make any prima facie case warranting addition of the requested issue. GAF voluntarily admitted that it erred in its prior submission and Guild has proffered no specific allegations of fact indicating that there was any pattern of inaccurate reporting or motive to deceive. Although Guild claims that the requested issue is dissociated from its EEO allegations pending before the EEO Branch, it is apparent that Guild is hoping to use the requested issue to engage in an unwarranted "fishing expedition" with respect to WNCN(FM)'s EEO performance. Accordingly the Bureau opposes addition of requested issue (1)

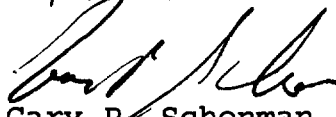
discussed its negotiations with GAF regarding changing of the name of the "WNCN Listeners Club." In rejecting the allegations raised in the Petition to Deny, the HDO at paragraph 33 specifically noted that Guild alleged that GAF had abused the Commission's processes with respect to its listener organization. Thus, Guild's contention that the HDO failed to address its allegations is totally without merit. To the extent that Guild suggests that the HDO's exposition of its allegations was inadequate, the Bureau submits that it has reviewed the abuse of process allegations in Guild's Petition to Deny and Petition for Reconsideration and concludes that the requested issue is not warranted. Basically, what Guild is arguing is that GAF was a hard bargainer and did not perform in accordance with the agreements entered into with Guild. The Commission has consistently held that it is not the proper forum for the resolution of private disputes and that any redress should be sought in a local court of competent jurisdiction. John L. Runner, Receiver (KBIF), 36 RR 2d 773, 778 (1976). Thus, the Bureau opposes addition of the requested issue.

8. In summary, the Bureau opposes addition of both of  
Guild's requested issues.

Respectfully submitted,  
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**CERTIFICATE OF SERVICE**

Michelle C. Mebane, a secretary in the Hearing Branch,  
Mass Media Bureau, certify that I have, on this 28th day of April  
1993, sent by First Class mail, U.S. Government frank, copies of  
the foregoing **"Mass Media Bureau's Opposition Motion to Enlarge  
Issues"** to:

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